

### **REMARKS**

In accordance with the forgoing, claims 1, 21, 41 and 57 have been amended. Claims 1, 4-21, 24-41 and 44-57 are pending and under consideration.

#### **I. Rejections Under 35 USC § 112**

Claims 1, 4-15, 20, 21, 24-35 41 and 44-57 stand rejected under 35 USC § 112, second paragraph, as being indefinite for failing to point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1, 21, 41 and 57 have been amended to more clearly set forth a difference between the baseline trend and one or a combination of a most recent measured impedance, a period average impedance, and the short term trend of the measured impedances. Support for the amendments can be found, for example, at paragraphs [0093]-[0095]. Accordingly, withdrawal of the rejection is respectfully requested.

#### **II. Rejections Under 35 USC § 102**

Claims 1, 4, 13-15, 20-21, 24, 33-35, 39-41, 44, 49-51 and 55-57 stand rejected under 35 USC § 102(b) as being anticipated by U.S. Patent No. 5,957,861 to Combs et al. et al. ("Combs"). Applicants respectfully assert that the claims of the present invention are patentably distinguishable from Combs, and the rejection is respectfully traversed.

Independent claims 1, 21, 41 and 57 of the present application are directed to determining changes in relative position of the short term trend and the baseline trend, and accumulating, in response to the determined changes, a difference between the updated baseline trend and one or a combination of a most recent measured impedance, a period average impedance and the short term trend of the measured impedances. Therefore, according to the invention, rather than being a straight accumulating, the accumulating of the difference between the updated baseline trend and one or a combination of a most recent

measured impedance, a period average impedance, and the updated short term trend of the measured impedances occurs under a specific condition of the determined changes (see paragraphs [0093]-[0095], for example).

Combs teaches the determination of the extent and progression of edema based on a single data point (LTA-STA), or utilizes a chart or history of the impedance (LTA-STA) versus time to determine the effectiveness of drug therapy. (see column 9, lines 48-59) In addition, as pointed out by the Examiner, Combs teaches using trend data to chart variation over time between the short term and long term average. (see column 11, lines 32-36).

However, Combs does not teach accumulating of the difference between the updated baseline trend and one or a combination of a most recent measured impedance, a period average impedance, and the updated short term trend of the measured impedances occurs under a specific condition of the determined changes. Therefore, Combs does not teach determining changes in relative position of the short term trend and the baseline trend, and accumulating, in response to the determined changes, a difference between the updated baseline trend and one of a most recent measured impedance, a period average impedance, and the short term trend of the measured impedances, as set forth in independent claims 1, 21, 41 and 57 of the present application. Therefore for at least this reason, independent claims 1, 21, 41 and 57 are patentably distinguishable from Combs.

Claims 4, 13-15, 20, 24, 33-35, 39, 40, 44, 49-51, 55 and 56 depend directly or indirectly from independent claims 1, 21 and 41 discussed above, and are submitted as being patentable for the reasons that independent claims 1, 21 and 41 are believed to be patentable, as well as for the reason that these claims further distinguish over the referenced prior art documents. Therefore, for at least the reasons set forth above, claims 1, 4, 13-15, 20-21, 24, 33-35, 39-41, 44, 49-51 and 55-57 are patentably distinguishable from Combs. Accordingly, withdrawal of the rejection is respectfully requested.

### **III. Rejections Under 35 USC § 103**

Claims 16, 36 and 52, and 52-54 stand rejected under 35 USC § 103(a) as being obvious over Combs. Applicants respectfully assert that the claims of the present invention are patentably distinguishable from Combs, and the rejection is respectfully traversed.

As set forth above, Combs does not teach or suggest determining changes in relative position of the short term trend and the baseline trend, and accumulating, in response to the determined changes, a difference between the updated baseline trend and one of a most recent measured impedance, a period average impedance, and the short term trend of the measured impedances, as set forth in independent claim 41 of the present application. Therefore for at least this reason, independent claim 41 and claim 52 dependent thereon are patentably distinguishable from Combs. Accordingly, withdrawal of the rejection of claim 52 is respectfully requested.

Independent claims 16 and 36 set forth updating the short term trend by generating a weighted sum of the short term trend for two previous days and the measured impedance generated for the current day and the two previous days. Combs does not teach or suggest updating the short term trend by generating a weighted sum of the short term trend for two previous days and the measured impedance generated for the current day and the two previous days, as set forth in independent claims 16 and 36. Accordingly, for at least this reason, withdrawal of the rejection of claims 16 and 36 is respectfully requested.

Claims 5-12, 17, 18, 25-32, 37, 38, 45-48, 53 and 54 stand rejected under 35 USC § 103(a) as being obvious over Combs. Applicants respectfully assert that the claims of the present invention are patentably distinguishable from Combs, and the rejection is respectfully traversed.

As set forth above, Combs does not teach or suggest determining changes in relative position of the short term trend and the baseline trend, and accumulating, in response to the determined changes, a difference between the updated baseline trend and one of a most recent measured impedance, a period

average impedance, and the short term trend of the measured impedances, as set forth in independent claims 1, 21 and 41 of the present application. Therefore for at least this reason, independent claim 1 and claims 5-12 dependent thereon, independent claim 21 and claims 25-32 dependent thereon, and independent claim 41 and claims 45-48, 53 and 54 dependent thereon are patentably distinguishable from Combs. Accordingly, withdrawal of the rejection of claims 5-12, 25-32, 45-48, 53 and 54 is respectfully requested.

In dependent claim 17 sets forth means for and independent claim 37 sets forth a method that includes updating the adaptive baseline trend by setting the adaptive baseline trend equal to a previous adaptive baseline trend reduced by a predetermined downdrift in response to the current adaptive baseline trend being greater than the current short term trend, and by setting the adaptive baseline trend equal to the previous adaptive baseline trend increased by a predetermined updrift in response to the current adaptive baseline trend being less than the current short term trend, wherein the updrift is greater than the downdrift.

The Examiner asserts that "[i]t would be obvious to modify the trend value of the trend in order to provide predictable results of optimizing the recorded impedance data from the patient." Applicants respectfully disagree. While more predictable results are a noble and obvious goal shared by all, it is along the path of devising the process or apparatus for generating the more predictable results that invention, set forth in the claims, takes place. While Combs teaches the possibility of more predictable results using short term and long term data, Combs does not teach or suggest utilizing an updrift and a downdrift during updating of the long term and short term weighted average values. Therefore, Combs does not teach or suggest updating the adaptive baseline trend by setting the adaptive baseline trend equal to a previous adaptive baseline trend reduced by a predetermined downdrift in response to the current adaptive baseline trend being greater than the current short term trend, and by setting the adaptive baseline trend equal to the previous adaptive baseline trend increased by a predetermined updrift in response to the current adaptive baseline trend being

less than the current short term trend, wherein the updrift is greater than the downdrift, as set forth in independent claims 17 and 37. Therefore, independent claim 17 and 37 are patentably distinguishable from Wahlstrand.

Claims 18 and 38 depend directly or indirectly from either independent claim 17 or 37 discussed above, and are submitted as being patentable for the reasons that independent claims 17 and 37 are believed to be patentable as well as for the reason that these claims further distinguish over Combs.

Accordingly, for at least the reasons set forth above, withdrawal of the rejection of independent claim 17 and claim 18 dependent thereon, and independent claim 37 and claim 38 dependent thereon is respectfully requested

#### **IV. Conclusion**

Applicant asserts that the remarks presented herein are fully responsive to the Office Action and are sufficient to overcome the rejections presented in the Office Action. However, there may be other arguments to be made as to why the pending claims are patentable. Applicant does not concede any such arguments by having not presented them herein. Applicant respectfully asserts that the present claims are in condition for allowance. Withdrawal of the instant rejections and issuance of a Notice of Allowance is respectfully requested.

Should any issues remain outstanding, the Examiner is urged to telephone the undersigned to expedite prosecution. The Commissioner is authorized to charge any deficiencies and credit any overpayments to Deposit Account No. 13-2546.

Respectfully submitted,

Stadler et al.

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Date

/Michael C. Soldner/  
Michael C. Soldner  
Reg. No. 41,455  
(763) 514-4842  
Customer No. 27581